

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ALFONSO HERNANDEZ**

**Plaintiff,**

v.

**CIV 12-394 KBM-ACT**

**DANIEL BACA et al,**

**Defendants.**

**DEFENDANTS DANIEL BACA, JENNIFER JARA, LEAH KELLY, AND JACOB  
WELCH'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PLAINTIFF'S CLAIM  
FOR VIOLATION OF CIVIL RIGHTS**

**COME NOW**, Defendants Daniel Baca, Jennifer Jara, Leah Kelly, and Jacob Welch (hereinafter “City Defendants”) by and through their attorney, Assistant City Attorney Stephanie M. Griffin, and hereby state the following for their Answer to Plaintiff’s Complaint for Plaintiff’s Claim for Violation of Civil Rights.

**INTRODUCTION**

1. City Defendants deny the allegations contained in the “Introduction” section of Plaintiff’s complaint.

**JURISDICTION**

2. City Defendants do not contest the jurisdiction allegations contained in Paragraph 1 of Plaintiff’s complaint.

3. In response to Paragraph 2 of Plaintiff’s complaint, City Defendants admit that the subject incident referred to in Plaintiff’s complaint occurred within the jurisdiction of the United States District Court for the District of New Mexico. City Defendants deny the remaining allegations contained in Paragraph 2 of Plaintiff’s complaint.

**PARTIES**

4. City Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations contained in Paragraphs 3 of Plaintiff's complaint and therefore deny the same.

5. City Defendants admit the allegations contained in Paragraph 4 of Plaintiff's complaint.

**FACTS COMMON TO ALL COUNTS**

6. City Defendants deny the allegations contained in Paragraphs 5, 6, and 7 of Plaintiff's complaint.

7. City Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations contained in Paragraphs 8 of Plaintiff's complaint and therefore deny the same.

8. City Defendants deny the allegations contained in Paragraph 9 of Plaintiff's complaint.

9. City Defendants admit the allegations contained in Paragraphs 10 and 11 of Plaintiff's complaint.

10. City Defendants deny the allegations contained in Paragraphs 12 and 13 of Plaintiff's complaint.

11. City Defendants admit the allegations contained in Paragraphs 14 and 15 of Plaintiff's complaint.

12. City Defendants deny the allegations contained in Paragraphs 16, 17, 18, 19, 20, 21, 22, and 23 of Plaintiff's complaint.

13. City Defendants admit the allegations contained in Paragraphs 24 and 25 of Plaintiff's complaint.

14. City Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations contained in Paragraphs 26, 27, 28, 28a, 28b, 28c, and 28d of Plaintiff's complaint and therefore deny the same.

15. City Defendants deny the allegations contained in Paragraphs 29, 30, and 31 of Plaintiff's complaint.

**COUNT ONE: PLAINTIFF'S CLAIM OF DEPRIVATION OF FOURTH  
AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE DETENTION,  
SEIZURE, SEARCHES, AND EXCESSIVE FORCE**

16. In response to Paragraph 32 of Plaintiff's complaint, City Defendants admit and deny Paragraphs 1 through 31 of Plaintiff's complaint as set forth in Paragraphs 1 through 15 of this Answer.

17. In response to Paragraph 33 of Plaintiff's complaint, City Defendants state that these allegations contain legal conclusions as opposed to factual averments to which City Defendants are not required to admit or deny.

18. City Defendants deny the allegations contained in Paragraphs 34 and 35 of Plaintiff's complaint.

19. In response to Paragraph 36 of Plaintiff's complaint, City Defendants state that these allegations contain legal conclusions as opposed to factual averments to which City Defendants are not required to admit or deny.

20. City Defendants deny the allegations contained in Paragraphs 37, 38, 39, 40, 41, and 42 of Plaintiff's complaint.

**COUNT TWO: PLAINTIFF'S CLAIM OF DEPRIVATION OF FIRST AMENDMENT  
RIGHT TO FREEDOM OF SPEECH, EXPRESSION AND EXERCISE OF RELIGION**

21. In response to Paragraph 43 of Plaintiff's complaint, City Defendants admit and deny Paragraphs 1 through 42 of Plaintiff's complaint as set forth in Paragraphs 1 through 20 of this Answer.

22. City Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 44 of Plaintiff's complaint and therefore deny the same.

23. In response to Paragraph 45 of Plaintiffs' complaint, City Defendants state that these allegations contain legal conclusions as opposed to factual averments to which City Defendants are not required to admit or deny.

24. City Defendants deny the allegations contained in Paragraphs 46, 47, 48, 49, and 50 of Plaintiff's' complaint, including the WHEREFORE clause contained in Count Two.

25. Any allegation not specifically admitted in this Answer is hereby denied.

**AFFIRMATIVE DEFENSES**

1. City Defendants are entitled to qualified immunity as they did not commit a clearly established constitutional violation.

2. City Defendants acted reasonably under the totality of the circumstances and in good faith.

3. There was probable cause for Plaintiff's arrest and prosecution.

4. An objectively reasonable amount of force was used to effect Plaintiff's arrest

5. City Defendants breached no duty owed to Plaintiff.

6. Plaintiff failed to mitigate his damages.

7. Plaintiffs' injuries or losses, if any, were proximately caused by the negligence, intentional misconduct or other fault of the Plaintiffs and/or third person for whom City Defendants are not liable.

8. Plaintiffs' claims do not provide a basis for a punitive damage award

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38, City Defendants hereby demand a trial by jury on all claims and issues raised in Plaintiff's complaint as allowed by law.

Respectfully submitted,

CITY OF ALBUQUERQUE  
David J. Tourek, City Attorney

/s/ Stephanie M. Griffin  
Assistant City Attorney  
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Attorney for City Defendants

I hereby certify that the foregoing was sent via Notice of Electronic Filing to:

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*Attorneys for Plaintiffs*

on this 19th day of June, 2012.

/s/ Stephanie M. Griffin, Assistant City Attorney